Graphic Communications International Union Local 1-M, a/w Graphic Communications International Union, AFL–CIO *and* Heinrich Envelope Corporation. Case 18–CP–328

November 13, 1991

DECISION AND ORDER

BY MEMBERS DEVANEY, OVIATT, AND RAUDABAUGH

Upon a charge filed on February 8, 1991, by the Heinrich Envelope Corporation (the Charging Party), the General Counsel of the National Labor Relations Board issued a complaint on February 26, 1991, alleging that the Respondent, Graphic Communications International Union Local 1-M, a/w Graphic Communications International Union, AFL–CIO, violated Section 8(b)(7)(B) of the Act by picketing to force the Charging Party to recognize or bargain with the Respondent when it was not certified and within 12 months of a valid election. The Respondent filed a timely answer admitting in part and denying in part the allegations of the complaint.

On April 1, 1991, the General Counsel, the Respondent, and the Charging Party filed with the Board a stipulation of facts and motion to transfer the case to the Board. The parties stated that the stipulation and the attached exhibits constituted the entire record in this case and that they waived a hearing and decision by an administrative law judge. On May 21, 1991, the Board approved the stipulation and transferred the proceeding to the Board for issuance of a decision and order. All parties filed briefs.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

On the entire record and the briefs, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

The Charging Party, a Minnesota corporation with an office and place of business in Minneapolis, Minnesota, is engaged in the manufacture of envelopes. During the 12 months ending December 31, 1990, a representative period, the Charging Party, in the course and conduct of its operations, purchased and received goods and supplies valued in excess of $50,000 directly from sources outside the State of Minnesota.

We find that the Charging Party is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that the Respondent is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. *Facts*

About December 5, 1989, the Respondent began an economic strike, which included the picketing of the Charging Party's premises with signs carried and posted near the street in front of the facility. The signs read, ''STRIKE Stay Away Graphic Comm Local 1-M.'' On January 9, 1991, the Respondent filed an unfair labor practice charge against the Charging Party, alleging that it had made promises and threats to discourage employees from voting for the Respondent. On the same day, the Respondent lost a decertification election (it filed no objections).

Picketing ceased on January 9, but picket signs remained stuck in the ground. Since January 9 the Respondent has made no demands to bargain with the Charging Party; indeed, there was no communication between them from January 9 to February 8. On January 16, 1991, the Board issued a Certification of Results of the election, decertifying the Respondent. On February 2, 1991, a supervisory official of the Charging Party removed the picket signs.

From about February 5 to February 8, 1991, agents of the Respondent, including Jerry Lang and Gale Babcock, picketed the Charging Party's premises, carrying signs bearing the same message as the signs used in the previous picketing. They spoke to the drivers of vehicles making pickups and deliveries at the Charging Party's premises. Some of these vehicles turned away without entering the premises.

On February 8, 1991, the Respondent was advised by phone that its charge would be dismissed by the Regional Director if it was not withdrawn. On the same day, the Respondent filed another unfair labor practice charge against the Charging Party, repeating the earlier allegations and also alleging that the Charging Party had varied its discipline policy so as not to discipline or discharge a replacement employee, and made changes in work schedules and in its leave and vacation policy in order to discourage membership in the Respondent. Also on February 8, the Charging Party filed the unfair labor practice charge that gave rise to this case. All picketing stopped after February 8, and the Respondent has neither resumed picketing nor threatened to do so since then.

On February 15, 1991, the Respondent's first charge was dismissed. The Respondent did not appeal the dismissal. The Regional Office has advised the Board that the Respondent's second charge was dismissed on April 24, 1991, and that the Respondent did not appeal the dismissal.

B. *Contentions of the Parties*

The General Counsel contends that the Respondent's prior picketing conduct and the language on the signs

show that the February picketing had a recognitional object. He argues that the Respondent began picketing December 5, 1989, in support of an economic strike to force the Charging Party to recognize or bargain with it. He notes that after the January 9 election the Respondent left the signs stuck in the ground, that almost immediately after the signs were removed the Respondent resumed picketing with identical signs, and that the Respondent made no disclaimer or any communication to the Charging Party indicating that its intentions had changed. The General Counsel submits that, under these circumstances, the message on the signs showed a recognitional objective, noting that the Respondent, despite the January 16 decertification, purported to be ''on strike'' from February 5 to February 8. He maintains that the Respondent has offered no evidence contemporaneous with the February picketing to support the view that the picketers were protesting unfair labor practices.

The General Counsel also avers that the timing of the cessation of the February picketing bolsters his case. He contends that the Respondent ceased picketing not because it had learned that the Regional Office considered its January unfair labor practice charge unmeritorious, but because the Charging Party had filed the charge in the instant case on February 8. He argues that, in any case, a decertified union cannot go ''on strike'' even to protest unfair labor practices, and that the pendency of unfair labor practice charges not also proffered as election objections does not erase the effect of the election.

The Charging Party submits that the Act does not recognize or separately protect ''unfair labor practice picketing'' and that the proximity of the Respondent's February picketing to the election and to the prior strike indicates its representational purpose, especially in the absence of a disclaimer. It maintains that the Respondent's successful effort to inflict direct economic harm (i.e., turning away vehicles) is substantial evidence of a violation of Section 8(b)(7)(B) of the Act and that the Respondent's assertion of nonmeritorious unfair labor practice charges cannot protect its picketing. The Charging Party avers that, had the Respondent's postelection ''strike'' been in protest of alleged unfair labor practices, picketing would have started January 9, the day after the Respondent filed its charge.

The Respondent contends that unless the wording of picket signs implies an object of recognition, bargaining, or organization, direct evidence from the signs is not dispositive and that in this case the signs merely suggested that picketing was taking place. The Respondent argues that the General Counsel has not met his burden of affirmatively showing a proscribed object of the February picketing. In support of this argument, the Respondent submits that, acting in good faith, it filed unfair labor practice charges as a result of the Charging Party's promises and threats before the election and that, if called, the picketers would testify that the February picketing (nearly 1 month after the economic strike ended) was in protest of the unfair labor practices and did not seek recognition. The Respondent maintains that its failure to file objections to the election suggests that any recognitional object it might have pursued during the economic strike no longer motivated it while it pursued the unfair labor practice charges.

The Respondent avers that, if picketing begins with a recognitional or bargaining objective, even if it continues uninterrupted (which was not the case here) it does not follow that the same objective remains operative. The Respondent cites *McLeod v. Hotel & Restaurant Employees Local 89 (Stork Restaurant)*, 280 F.2d 760 (2d Cir. 1960), for the proposition that a union that has engaged in recognitional picketing may later lawfully engage in informational picketing.

In the instant case, the Respondent argues, economic strike picketing ceased after the January 9 election. The Respondent submits that because the February picketing occurred in conjunction with the filing of unfair labor practice charges against the Charging Party, there is no presumption that a pre-January 9 object of picketing applies to the February picketing. Further, the Respondent maintains, there was no recognitional motive to the pre-January 9 picketing, which occurred in conjunction with an economic strike. The Respondent also avers that the dismissal of its charges does not show that the February picketing had an unlawful object. It argues that the cessation of the February picketing upon that dismissal shows that the object of the February picketing was lawful.

C. *Discussion*

Section 8(b)(7)(B) of the Act provides, in pertinent part:

> It shall be an unfair labor practice for a labor organization. . . .
>
> (7) to picket or cause to be picketed . . . any employer where an object thereof is forcing or requiring an employer to recognize or bargain with a labor organization as the representative of his employees, or forcing or requiring the employees of an employer to accept or select such labor organization as their collective-bargaining representative, unless such labor organization is currently certified as the representative of such employees:
>
> . . . .
>
> (B) where within the preceding twelve months a valid election under section 9(c) of this Act has been conducted . . . .

The Respondent was not certified at the time of the February picketing and the February picketing took

place within 12 months of a valid election. Thus, the only issue is whether the February picketing had a recognitional or bargaining objective.

To determine the object of picketing, the Board ''looks to the or [sic] surrounding facts and circumstances and draws its conclusion from the facts.'' *United Furniture Workers (Jamestown Sterling Corp.)*, 146 NLRB 474, 478 (1964). Whether picketing pursues a proscribed object is an evidentiary question of fact. *Plumbers Local 741 (Keith Riggs Plumbing)*, 137 NLRB 1125 (1962). The party alleging the violation bears the burden of establishing a proscribed object. *Automobile Workers Local 259 (Fanelli Ford)*, 133 NLRB 1468 (1961). To establish a violation, it is sufficient to show that one object of the picketing was proscribed. *Stage Employees IATSE Local 15 (Albatross Productions)*, 275 NLRB 744 (1985). Language on picket signs, while not dispositive, is relevant to the inquiry, as are the union's prior activities and contemporaneous disclaimers or statements of purpose by picketers or union officials. *Machinists Local 1173 (Alhambra Motors)*, 266 NLRB 91, 93 (1983).

The Respondent began its picketing on December 5, 1989, at a time when it was the representative of the employees. The picketing was in connection with an economic strike and was, like the strike itself, in support of bargaining demands. It is clear, therefore, that such picketing was for a ''bargaining'' objective within the meaning of Section 8(b)(7). *Carpenters Local 2797 (Stoltze Co.)*, 156 NLRB 388, 392–393 (1965); also see *Teamsters Local 812 (Pepsi-Cola Newburgh)*, 299 NLRB 688 (1990), enfd. 937 F.2d 684 (D.C. Cir. 1991). The picketing was lawful only because the Respondent, at that time, was the lawful representative of the employees.

The Respondent lost the representation election held on January 9, 1991, and the results were certified on January 16. Hence, it lost the privilege to picket for a recognitional or bargaining objective. Significantly, the picket signs that remained planted in the ground from January 9 through February 2 and the picket signs that were carried from February 5 through February 8 bore precisely the same legend as the earlier picketing in support of bargaining. Neither the signs nor any other contemporary communication or conduct by the Respondent indicated any change in the object of its earlier picketing or supported its current contention that the February picketing was in protest of unfair labor practices. See, e.g., *Service Employees Local 9 (United Artists)*, 272 NLRB 685, 687 (1984); *Meat Cutters Local 229 (Jensen Meat Co.)*, 237 NLRB 650, 652 (1978). The Respondent was not merely seeking to inform the public of its dispute with the Charging Party. To the contrary, the Respondent's picketers approached several truckdrivers and persuaded them not to make pickups and deliveries at the Charging Party's facility. See *NLRB v. Ladies Garment Workers Local 155 (Boulevard Knitwear)*, 403 F.2d 388, 391 (2d Cir. 1968), enfg. 167 NLRB 763 (1967).

In these circumstances, that the Respondent ceased picketing after February 8, 1991, the day it was informed that its charge would be dismissed if it was not withdrawn, is insufficient to negate the inference, arising from its conduct until that time, that the Respondent's February picketing had as an object forcing or requiring the Charging Party to recognize or bargain with the Respondent, in violation of Section 8(b)(7)(B) of the Act[1] Nor do we find persuasive the Respondent's contention that its preelection picketing had no recognitional motive and that therefore no proscribed motive should be ascribed to its February picketing. As noted above, the Respondent's preelection picketing occurred in conjunction with an economic strike and was therefore clearly intended to require the Charging Party ''to recognize or bargain with'' the Respondent. The Respondent's contention that the February picketers, if called, would have testified that the Charging Party's unfair labor practices prompted their picketing also fails. Such testimony would constitute not contemporaneous evidence but a post-hoc, self-serving rationalization, and would be entitled to little weight. *Retail Store Employees Local 214 (Pick-N-Save Warehouse)*, 252 NLRB 547, 550 (1980). We also reject the Respondent's contention that its failure to file objections to the January decertification election shows that its February picketing had no recognitional object. The failure is at least equally consistent with the possibility that the Respondent had little confidence that its January 9 charges, which it repeated and amplified on February 8, were well-founded. Finally, while the Respondent correctly argues that picketing that begins with a recognitional or bargaining object may continue or resume with a different object, and that the dismissal of its charges does not, in and of itself, show the February picketing to have been unlawful, we are persuaded that, taking into account all the circumstances of this case, the Respondent's February picketing had an object proscribed by Section 8(b)(7)(B) of the Act.

Accordingly, we find that the Respondent violated Section 8(b)(7)(B).

CONCLUSION OF LAW

The Respondent, by picketing the Charging Party with an object of forcing or requiring the Charging Party to recognize or bargain with it within 12 months of a valid election under Section 9(c) of the Act and at a time when the Respondent was not certified as the

[1] Member Oviatt would presume that where a union loses a valid election preceded by recognitional picketing and continues or resumes picketing within the next 12 months, the picketing's object remains the same as previously (recognitional) when the union fails to give any contemporaneous indication that the object has changed.

collective-bargaining representative of the Charging Party's employees, engaged in unfair labor practices affecting commerce within the meaning of Section 8(b)(7)(B) and Section 2(6) and (7) of the Act.

THE REMEDY

Having found that the Respondent has engaged in unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

Specifically, we shall order the Respondent to cease and desist from picketing, causing to be picketed, or threatening to picket the Charging Party with a recognitional or bargaining object for a period of 1 year from February 9, 1991. We shall order the Respondent to cease and desist from picketing, causing to be picketed, or threatening to picket the Charging Party with a recognitional or bargaining object less than 12 months after losing a valid election or in circumstances that fail to accord the Charging Party 12 uninterrupted months without such picketing after such an election. We shall also order the Respondent to post the appropriate notice.

ORDER

The National Labor Relations Board orders that the Respondent, Graphic Communications International Union Local 1-M, a/w Graphic Communications International Union, AFL–CIO, St. Paul, Minnesota, its officers, agents, and representatives, shall

1. Cease and desist from

(a) Picketing, or causing to be picketed, or threatening to picket, Heinrich Envelope Corporation, at the Company's manufacturing facility in Minneapolis, Minnesota, with an object to force or require Heinrich Envelope Corporation to recognize or bargain with it as the employees' representative or to force or require the employees of Heinrich Envelope Corporation to accept or select it as their bargaining representative, for a period of 1 year from February 9, 1991.

(b) Picketing, or causing to be picketed, or threatening to picket, Heinrich Envelope Corporation, at the manufacturing facility in Minneapolis, Minnesota, for either of the aforementioned objectives, where, within the preceding 12 months, a valid election under Section 9(c) of the Act has been conducted which the Respondent did not win, or in circumstances which fail to provide Heinrich Envelope Corporation with an uninterrupted 12-month period following such election to be free from such picketing.

2. Take the following affirmative action necessary to effectuate the purposes of the Act.

(a) Post at its offices copies of the attached notice marked ''Appendix.''[2] Copies of the notice on forms provided by the Regional Director for Region 18, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt, and in conspicuous places including all places where notices to members are customarily posted, and maintained for 60 consecutive days. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(b) Sign and return to the Regional Director sufficient copies of the notice for posting by Heinrich Envelope Corporation if willing at all places where notices to employees are customarily posted.

(c) Notify the Regional Director in writing within 20 days of this Order what steps the Respondent has taken to comply.

APPENDIX

NOTICE TO EMPLOYEES AND MEMBERS
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT for a period of 1 year from February 9, 1991, picket, cause to be picketed, or threaten to picket, Heinrich Envelope Corporation, Minneapolis, Minnesota, with an object to force or require Heinrich Envelope Corporation to recognize or bargain collectively with us, or to force or require its employees to accept or select us as their bargaining representative.

WE WILL NOT picket, cause to be picketed, or threaten to picket, Heinrich Envelope Corporation, with an object to force or require it to recognize or bargain collectively with us, or to force or require its employees to accept or select us as their collective-bargaining representative, where a valid election, which we did not win, has been conducted by the National Labor Relations Board among employees of Heinrich Envelope Corporation within the preceding 12 months, or in circumstances which fail to provide Heinrich Envelope Corporation with an uninterrupted 12-month period following such election to be free from such picketing.

GRAPHIC COMMUNICATIONS INTERNATIONAL UNION LOCAL 1-M, A/W COMMUNICATIONS INTERNATIONAL UNION, AFL–CIO

[2] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''